IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

LETTERS PATENT APPEAL NO.124 OF 2006
IN
WRIT PETITION NO.5308 OF 2005

Sudhagad Education Society and another ..Appellants
v/s.
Smt.Walzade Baby Madhavrao and others ..Respondents

Mr.M.V.Limaye for the appellants.

Mr.Manish Mistry i/by M/s.M.P.Vashi & Associates for the respondent No.1.

CORAM : R.M.LODHA &
S.J.VAZIFDAR, JJ.

DATED : 18TH JULY, 2006.

P.C.

We heard Mr.M.V.Limaye, counsel for the appellants and Mr.Manish Mistry, counsel for the respondents.

2. Admit.

3. M/s.M.P.Vashi & Associates waive service for the respondent No.1. The respondent Nos.2 and 3 are formal parties and therefore, their service is dispensed with.

4. The appeal is heard finally at this stage.

5. The respondent No.1 (hereinafter to be referred to as “the teacher”) filed an appeal against the present appellants (hereinafter to be referred as “management”), challenging her termination from service with effect from 1st May, 2004. She prayed for reinstatement in service with full back wages and consequential benefits. The School Tribunal, after hearing the parties, by judgment dated 31st March, 2005, allowed the appeal filed by the teacher, set aside the order of termination and declared that the teacher is entitled to reinstatement in service with full back wages and consequential benefits. The Tribunal also recommended to the State Government that back wages should be deducted from the grant due and payable to the Management.

6. Aggrieved by the order of the School Tribunal, the management filed the writ petition being writ petition No.5308 of 2005 before this court.. On 25.11.2005, the learned Single Judge directed the management to deposit the amount of back wages within two weeks therefrom. It was observed that failing which, the petition shall stand dismissed without reference to court.

7. According to the management, the amount of back wages that was due and payable to the teacher from the date of termination until reinstatement was deposited within time as per the order dated 25.11.2005. The teacher on the other hand contends that she is entitled to back wages not from the date of termination but from 1.7.1991 and therefore, the management defaulted in complying the order dated 25.11.2005.

8. The learned Single Judge by his order has directed the management to deposit a sum of Rs.16,76,412.05 within four weeks from the date of the order minus the amount already deposited, failing

which it was directed that the writ petition shall not be taken up for admission and shall stand dismissed without reference to court.

9. An identical matter being LPA No.56 of 2006 arising out of writ petition No.5309 of 2005, Sudhagad Education Society and another v. Ingale Laxman Shankar and others, came up before us on7th July, 2006 and while dealing with the identical situation, we held thus-

> "8. The order dated 13.1.2006 is not sustainable for more than one reason. For one, the order dated 25.11.2005 does not direct the deposit of back wages from 16.6.1997 as has been basis for the learned single Judge to order the management to deposit the amount of Rs.10,36,448.81 ps. The other, when the Tribunal declared in its order dated 31.3.2005 that the teacher is entitled to reinstatement in service with full back wages, obviously it meant that the teacher shall be entitled to back wages from the date of termination in service until reinstatement. Admittedly, the teacher was terminated from service by the order dated 17.8.2004. In this view of the matter, the claim of the teacher that he is entitled to back wages from 16.6.1997 till 31.3.2005 amounting to Rs.10,36,448.81 ps. Is apparently misconceived. The learned single Judge erred in directing the management to deposit the said amount and observing that in default the Writ Petition shall not be taken up for admission and stand dismissed

without reference to Court.

> 9. The question as to whether the teacher was entitled to the wages from 16.6.1997 was not at all under consideration before the Tribunal. The Tribunal has not gone into this aspect at all and, therefore, the contention of the teacher that the Tribunal has awarded back wages to him from 16.6.1997 cannot be accepted. If the teacher has not been paid wages from 16.6.1997, the course available to him is to pursue the appropriate legal remedy for recovery of wages which according to him were not paid while he was in service before the order of termination but surely that was not and could not have been the subject matter of consideration in the Appeal filed by the teacher challenging his termination."

10. For the self-same reasons, we set aside the order dated 31.2.2006, passed by the learned Single Judge. Writ petition No.5308 of 2005 is restored to file. The management is directed to pay to the teacher back wages if not paid so far from the date of termination until the date of reinstatement i.e. 15.7.2004. The said payment shall be made within two weeks from today. We record and accept the statement of the counsel for the management that the respondent No.1 has been reinstated with effect from 15.7.2004 and that she is being paid her monthly salary and allowance in time.

However, this is seriously disputed by the respondent No.1. We direct the Education Officer (Secondary), Zilla Parishad, Raigad to hold an enquiry as to whether the management has paid monthly salary and allowance to the respondent No.1 as per the order of the School Tribunal from 15.7.2004 until 30th June, 2006 or not. If the management is found to have defaulted in making payment of monthly salary and allowances to the respondent No.1 from 15th July, 2004 until 30th June, 2006, we direct the management to pay the due amount to the respondent No.1 within two weeks from the date of determination by the Education Officer plus a cost of Rs.10,000/- for having defaulted in paying to the respondent No.1 her monthly salary and allowances in time. We also direct the management to pay monthly salary and allowances to the respondent No.1 from the month of July, 2006 and subsequent months on/or before 10th of each succeeding month. We also record the statement of the counsel for the management that henceforth, the respondent No.1 shall have no grievance that she has not been permitted to sign the muster.

11. Needless to say that as per the order of the School

Tribunal, the management must compute the back wages payable to the teacher as the reinstatement is ordered with all consequential benefits.

12. Writ petition No.5308 of 2005 be posted before the learned Single Judge for consideration.

(R.M.LODHA, J.)

(S.J.VAZIFDAR, J.)